Translating guilt: Identifying leadership liability for mass atrocity crimes

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The darkest side of humanity is expressed when individuals acting in collectives perpetrate crimes of mass atrocity on entire communities. There is an intuition that the leaders of regimes leading to such atrocities are responsible, but the question faced by international criminal tribunals is whether leadership liability should differ from other kinds of complicity. Debates on modes of liability in ICL have become more and more complex over the last 20 years, and despite the fact that mass atrocity is of a nature quite different from the gang and mafia-type crimes familiar to domestic criminal law systems, international tribunals have nowhere else to turn but domestic criminal law models.

This book therefore takes a comparative look at the development of modes of leadership liability in international criminal law, by engaging in a critical study of different domestic models and how these have been translated to the international context. When are the leaders responsible for the horrendous acts that take place under their leadership, and how?
TRANSLATING GUILT

Identifying Leadership Liability for Mass Atrocity Crimes

ACADEMISCH PROEFSCHRIFT

ter verkrijging van de graad van doctor
aan de Universiteit van Amsterdam
op gezag van de Rector Magnificus
prof. dr. D. C. van den Boom

ten overstaan van een door het college voor promoties
ingestelde commissie,
in het openbaar te verdedigen in de Agnietenkapel

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\textsuperscript{1}From \textit{The Psychology of Transference}, para 400.
calm, confident and elated:

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# List of Abbreviations

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<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>BGH</td>
<td>Bundesgerichtshof (German Federal Court of Justice)</td>
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<td>BiH</td>
<td>(State Court of) Bosnia Herzegovina</td>
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<td>CJM</td>
<td>Código de Justicia Militar, (Argentine Military Code of Justice)</td>
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<td>DRC</td>
<td>Democratic Republic of Congo</td>
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<td>ECCC</td>
<td>Extraordinary Chambers in the Courts of Cambodia</td>
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<td>ECHR</td>
<td>European Convention on the Protection of Human Rights and Fundamental Freedoms</td>
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<tr>
<td>IACHR</td>
<td>Inter-American Court of Human Rights</td>
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<td>ICC</td>
<td>International Criminal Court</td>
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<tr>
<td>ICC</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>ICJ</td>
<td>International Court of Justice</td>
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<td>ICL</td>
<td>International Criminal Law</td>
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<td>ICRC</td>
<td>International Committee for the Red Cross</td>
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<td>ICTR</td>
<td>International Criminal Tribunal for Rwanda</td>
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<td>ICTY</td>
<td>International Criminal Tribunal for Former Yugoslavia</td>
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<tr>
<td>IHL</td>
<td>International Humanitarian Law</td>
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<tr>
<td>ILC</td>
<td>(United Nations) International Law Commission</td>
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<tr>
<td>IMT</td>
<td>International Military Tribunal</td>
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<tr>
<td>ISIS</td>
<td>Islamic State of Iraq and al-Sham</td>
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<td>JCE</td>
<td>Joint Criminal Enterprise</td>
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<tr>
<td>MCP</td>
<td>Model Penal Code (United States of America)</td>
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</table>
**OTP**  Office of the Prosecutor

**RUF**  Revolutionary United Front (Sierra Leone)

**SCSL**  Special Court for Sierra Leone

**StGB**  *Strafgesetzbuch*, (German criminal code)

**STL**  Special Tribunal for Lebanon

**UN**  United Nations

**US**  United States of America

**WCA**  War Crimes Act 2000 (Canada)
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- Statute of the International Criminal Tribunal for Rwanda 1994
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- Convention Respecting the Laws and Customs of War on Land 1907, T.S. No. 539 (hereinafter Fourth Hague Convention)
- European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, ETS 005 (hereinafter ECHR)
- International Covenant on Civil and Political Rights 1966, 999 UNTS 171 (hereinafter ICCPR)
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (signed 8 June 1977, entered into force 7 December 1978)
- United Nations Convention Relating to the Status of Refugees 1951, T.S. No. 6 (hereinafter UN Refugee Convention)
- Vienna Convention on the Law of Treaties 1969, 1155 UNTS 331 (hereinafter VCLT)

Resolutions of International Organisations


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- Código de Justicia Militar 1951 (hereinafter CJM)
- Código Penal de la Nación Argentina 1984 (hereinafter Código Penal)
- Convención Nacional Constituyente de 1994 1994 (hereinafter Constitución Nacional de Argentina)
- Documento Final de la Junta Militar sobre la Guerra contra el Subversion y el Terrorismo 1983 (hereinafter Documento Final)
- Enmiendas Códigos de Justicia Militar 1984 (hereinafter CJM Amended)
- Ley de Obedencia Debida 1987 (hereinafter Obedencia Debida)
- Ley de Pacificación Nacional 1983 (hereinafter Self-Amnesty Law)
- Ley de Punto Final 1986 (hereinafter Punto Final)
- Decláranse insanablemente nulas las Leyes Nros 23.492 y 23.521. 2003 (hereinafter Law Revoking Punto Final)
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Canada

- Bill C-45: An Act to Amend the Criminal Code (Criminal Liability of Organisations) 2003 (hereinafter Bill C-45)
- Canadian Charter of Rights and Freedoms 1985 (hereinafter Charter)
- Crimes Against Humanity and War Crimes Act 2000 (hereinafter War Crimes Act)
- Criminal Code of Canada 1985 (hereinafter Criminal Code)
- Interpretation Act 1985 (hereinafter Interpretation Act)

Germany

- Grundgesetze 1949 (hereinafter Grundgesetze)
- Strafgesetzbuch 1870 (hereinafter StGB)

USA

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- Trial of Werne Rohde and Eight others (1946) V Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No 10 56 (British Military Court at Wupertal)

- Trial of Otto Sandrock and Three Others (1945) 1 UN War Crimes Commission 35 (British Military Court for the Trial of War Criminals)

- Trial of Franz Schonfeld and others (1946) XI UN War Crimes Commission 68 (British Military Court at Essen)


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